



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 06-25320
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

January 31, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Foreign Preference and Foreign Influence. Clearance is granted.

History of Case

Applicant submitted his Security Clearance Application (SF 86), on January 3, 2006. On March 23, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline C (Foreign Preference) and Guideline B (Foreign Influence) for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on March 26, 2007. He answered the SOR in writing in an undated response, and requested a hearing before an Administrative Judge. DOHA received the request on March 30, 2007. Department Counsel was prepared to proceed on September 6, 2007, and the case was assigned to another administrative judge on September 10, 2007. Due to case load considerations, the case was reassigned to me on September 12, 2007. On September 25, 2007, DOHA issued a notice of hearing scheduling the case to be heard on October 3, 2007. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 3, which were received without objection. Applicant testified on his own behalf and offered Applicant Exhibits A through D, which were received without objection. DOHA received the transcript of the hearing (Tr.) on October 18, 2007. I granted Applicant's request to keep the record open until October 12, 2007, to submit additional matters. The Applicant timely submitted AE E, which was received without objection. The record closed on October 12, 2007.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to Serbia and Montenegro and Bosnia and Herzegovina contained in Exs. I through IX. Applicant's counsel had no objection and I took administrative notice of the documents offered by Department Counsel, which pertain to Serbia and Montenegro and Bosnia and Herzegovina. Tr. 19-22.

Administrative or official notice is the appropriate type of notice used for administrative proceedings. See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004)); *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). The most common basis for administrative notice at ISCR proceedings, is to notice facts that are either well known or from government reports. See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). Various facts pertaining to Serbia and Montenegro and Bosnia and Herzegovina were derived from Exs. I through IX as indicated under subheading "Serbia and Montenegro and Bosnia and Herzegovina" of this decision. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

In his Answer to the SOR received on March 30, 2007, Applicant admitted all of the factual allegations in ¶¶ 1.a., and 2.a. through 2.e., with explanations.

Applicant is a 51-year-old lab supervisor, who has been employed by a defense contractor since December 1989. He submitted his SF 86 as a first-time applicant at the request of his employer in January 2006. He was subsequently granted an interim secret clearance and has successfully held that clearance for “[a]bout one year” without any security breaches. Tr. 28, 34, 38.

Applicant was born in 1956 in what is now Bosnia and Herzegovina, the former Socialist Federal Republic of Yugoslavia. He attended a university in Serbia and Montenegro from September 1975 to October 1982 and was awarded a “teaching degree,” which Applicant described as “equivalent” to a bachelor’s degree. In 1983, Applicant served mandatory military service in the Yugoslavian Army as a “regular soldier” for approximately nine months. He later attended a journalism college also in Serbia and Montenegro from May 1985 to April 1986 where he was awarded a certificate in technical editing. Tr. 58, 79, 96-97, GE 2. He worked for a local newspaper from 1986 to 1989 as a technical editor and then as a journalist.

Applicant has been married to his wife since June 1983. They were married in Serbia and Montenegro. They have two children, a 24 year-old daughter, and a 22-year-old son. Applicant’s wife was born in Serbia and Montenegro, his daughter was born in Bosnia and Herzegovina, and his son was born in Serbia and Montenegro.

In August 1989, Applicant and his family immigrated to the U.S. Applicant became a naturalized U.S. citizen in September 1999, and was issued a U.S. passport in October 1999. Applicant holds dual citizenship with Bosnia and Herzegovina by birth. Applicant’s wife became a naturalized U.S. citizen in June 2001, and his son became a naturalized U.S. citizen in January 1986. Applicant’s wife is employed as an accountant for a grocery store, his daughter is a second year medical student, and his son is a senior in college, majoring in engineering. His daughter is a citizen of Bosnia and Herzegovina and lives with Applicant and his wife when not attending medical school. SOR ¶ 2.b. His daughter is a permanent resident alien with an application pending to become a U.S. citizen.

Applicant’s parents are citizens and residents of Bosnia and Herzegovina. SOR ¶ 2.a. They are retired and live on a farm. His mother is 74 years old and has been a housewife her entire life. She suffers from hypertension and has severe back problems. His father is 82 years old and worked as a park ranger at a national park administered by United Nations Educational, Scientific and Cultural Organization (UNESCO). His father is in very poor health and suffers from bladder cancer. In addition to cancer, he has had two heart attacks and has a pacemaker. Applicant telephones his parents “maybe twice a month” “to see . . . if [his father is] alive.” Tr. 48. When he visits his parents he gives them, “[m]aybe \$500, \$600.” Tr. 80.

Applicant has two brothers, one is 47 years old, and the other is 32 years old. His 47 year old brother is a citizen of Bosnia and Herzegovina and of Serbia and Montenegro and is a resident of Serbia. He is employed by a municipality in Serbia as a “secretary” whose job description would encompass that of ombudsman. SOR ¶ 2.d.

Applicant telephones this older brother “once or twice a month.” GE 3. Applicant’s 32 year old brother is a farmer and lives with his parents on the family farm. Applicant telephones his younger brother “once a month.” GE 3.

Applicant’s father-in-law was born in Slovenia and is a naturalized U.S. citizen living in the U.S. He is a retired chef. Applicant and his wife see him about “once a week.” GE 3. His mother-in-law is deceased. GE 1.

Apart from Applicant’s 47 year old brother being a non-political municipal employee, none of his immediate family is associated with or connected with the governments in Bosnia and Herzegovina or Serbia and Montenegro.

In July 2000, Applicant traveled to Bosnia and Herzegovina and Serbia and Montenegro with his two children; in July 2001, he traveled with his wife and two children to Bosnia and Herzegovina and Serbia and Montenegro; in July 2002, he traveled alone to Bosnia and Herzegovina and Serbia and Montenegro; in July 2003, he traveled alone to Bosnia and Herzegovina and Serbia and Montenegro; in July 2004, he traveled with his wife and son to Bosnia and Herzegovina and Serbia and Montenegro; in July 2005, he traveled with his wife and two children to Bosnia and Herzegovina; and in October 2006, he traveled to Serbia and Bosnia and Herzegovina. SOR ¶ 2.e. All of these visits were for the purpose of visiting his family. Not alleged was a visit Applicant made to Bosnia and Herzegovina and Serbia and Montenegro in July 2007. Tr. 74.

The President of Applicant’s company testified on his behalf. He holds a secret clearance and also is the facility security officer. The President interacts with the Applicant on a daily basis and knows the Applicant and his family personally and professionally. He stated Applicant “is head and shoulders above the majority of his colleagues and peers in terms of his skills, his knowledge, his thoughtfulness in his approach to his work, his ability to plan and schedule, his ability to instruct, and his ability to motivate others that work in the test area and also in our assembly area – the people that support the test lab in terms of providing parts for the test lab.” Tr. 26. The President also wrote a reference letter stating, “based on over 27 years in [company] and over 40 years as a working and cleared professional, [Applicant] deserves the trust of the US Government.” AE D.

Applicant’s company President stated, “We took time at the company to ascertain that the clearance was really necessary for [Applicant’s] work. After finding that our work was expanding to include even more classified aspects, we submitted his request for a clearance.” He also added, “I can guarantee that his loyalty is to the USA, and that his concerns are for the survival of our country in a very hostile world.” “[Applicant] is dedicated not only to the success of our company, but more importantly to the success of our country.” AE D.

The Director of Operations, who holds a secret clearance, and Production Manager also submitted reference letters on behalf of the Applicant. They interact with the Applicant on a daily basis and hold the same view of the Applicant as the company

President. They reiterated Applicant is a dependable, trustworthy, and honest person. Both witnesses recommended Applicant for a clearance. AE B, AE D.

Applicant's cousin submitted a reference letter on his behalf. His cousin is a principal engineer and at one time worked for the same employer as the Applicant. He stated he has known the Applicant for over 13 years. He stated, ". . . I have gotten to know [Applicant] very well and I would never question his integrity or the commitment to the United States of America. We are both immigrants to this country, which has become our home and we will both do what is necessary to protect it and keep it safe. [Applicant] is a person that I think of very highly and as myself a holder of a security clearance, I would recommend [Applicant] to be granted [a clearance], as his work, integrity, and commitment will prove to be very valuable to the United States of America." AE D.

Applicant submitted a letter dated October 3, 2007 to the Embassy of Bosnia and Herzegovina renouncing his citizenship. AE E. SOR ¶ 1.a. alleges as of February 2007 Applicant possessed a Socialist Federal Republic of Yugoslavia passport issued in July 1997 with an expiration date of July 2007. Not only has the passport expired, but the issuing country dissolved in the 2001 timeframe. See discussion *infra* under "Serbia and Montenegro and Bosnia and Herzegovina." Since Applicant submitted a copy of his expired Yugoslavian passport in Response to Interrogatories in February 2007, he does not know where it is. Tr. 54-54, GE 2. Applicant has only used his U.S. passport after becoming a U.S. citizen in 1999. Tr. 54-55.

Applicant estimates his net worth to be approximately \$300k. All of Applicant's financial interests are in the U.S., which includes a home valued at \$400k, 401(k) valued at \$110k, and checking and savings accounts. He has no financial ties to Bosnia and Herzegovina or Serbia and Montenegro. Tr. 82-84, 97-98. Applicant emphasized his loyalty to the U.S. He enjoys and appreciates his way of life in the U.S. and has embraced being a U.S. citizen. He exercises his rights as a U.S. citizen to include voting. Applicant's attitude is best summarized, "I came here because I really wanted to be here." Tr. 57.

SERBIA AND MONTENEGRO and BOSNIA AND HERZEGOVENA¹

In April of 1992, the Federal Republic of Yugoslavia (F.R.Y.) formed as a self-proclaimed successor to the Socialist Federal Republic of Yugoslavia. In late 1998, F.R.Y. President Slobodan Milosevic unleashed a brutal police and military campaign which included atrocities against civilian noncombatants. During this campaign, large numbers of ethnic Albanians were either displaced from their homes in Kosovo or killed by Serbian troops or police. These acts, along with others, provoked a military response from NATO, which consisted primarily of aerial bombing. At the outset of hostilities between NATO and the F.R.Y., the United States and the F.R.Y. severed diplomatic relations. In October of 2000, Slobodan Milosevic conceded defeat in routine federal

¹The contents of this section are taken in whole or in part from Exs. I through IX.

elections and, almost immediately, diplomatic relations with the United States improved. In November of that year the United States reestablished a diplomatic presence in Serbia, as the successor state to the F.R.Y., and formally reopened its embassy there in May of 2001.

In February 2003, F.R.Y.'s parliament adopted a new Constitutional Charter establishing the state union of Serbia and Montenegro. In May 2006, the Republic of Montenegro held a successful referendum on independence. After Montenegro's declaration of independence in June 2006, the parliament of Serbia stated that the Republic of Serbia was the continuity of the state union, rendering the two republics independent and sovereign countries. The Serbian Embassy in Washington, D.C., and the U.S. Embassy in Belgrade have reestablished bilateral relations and provide a full range of consular services. The newly-formed Republic of Serbia (Serbia) is a parliamentary democracy with approximately 7.5 million inhabitants.

Serbia's human rights record is variable. The Government generally respects the human rights of its citizens and continues efforts to address human rights violations; however, numerous problems persist. Even though the Serbian Constitution prohibits torture and other cruel, inhuman, or degrading treatment or punishment, police at times beat and harass detainees, usually during arrests or the initial phase of detention. Serbian law also provides for freedom of speech and of the press; however, there were reports of government interference in these freedoms and reprisals against persons who criticized the government. Another noted concern is amongst minority religious communities who report continuing problems with vandalism of buildings, cemeteries, and other religious sites.

Occasional demonstrations occur and even demonstrations intended to be peaceful have the potential to turn into confrontational situations and to possibly escalate into violence. Anti-American sentiment tends to be highest surrounding the anniversary dates of the 1999 NATO bombing campaign or during times of unusually high tension in Kosovo.

Kosovo, which is legally still part of Serbia, remains an international protectorate of the United Nations. An international security presence, which is known as Kosovo Force (KFOR), works closely with the UN Mission in Kosovo (UNMIK) to ensure protection for all of Kosovo's communities. Although the overall security situation has improved, inter-ethnic tensions and sporadic incidents of violence continue to occur.

Former Yugoslavia began to unravel when Slobodan Milosevic took power in 1986, because Milosevic's Serb nationalism led to intrastate ethnic strife. Slovenia and Croatia both declared independence from Yugoslavia in 1991. In February 1992, the Bosnian Government held a referendum on independence, and the Bosnia parliament declared independence on April 5, 1992. However, Bosnian Serbs, supported by neighboring Serbia, responded with armed force in an effort to partition the republic along ethnic lines to create a "greater Serbia." In March 1994, Muslim and Croats in Bosnia signed an agreement creating the Federation of Bosnia and Herzegovina,

however, the armed conflict with between the Bosnian Muslim-Croat coalition and the Bosnian Serbs continued until the November 21, 1995 Dayton Peace Agreement. Bosnia and Herzegovina was formed, and it is currently governed by a parliamentary democracy. The Government of Bosnia and Herzegovina has favorable relations with the United States, which itself participates in the Bosnian Peacekeeping force and has donated significant funds to help with reconstruction, humanitarian assistance, economic development, and military reconstruction.

Due to the weak government in Bosnia-Herzegovina (Bosnia), the nation remains vulnerable to exploitation as a terrorist safe haven or as a potential staging ground for terrorist operations in Europe. Following the 1992-95 conflict between the Bosnian Muslims-Croat coalition and the Bosnian Serbs, an estimated several hundred Islamic radicals remained behind and became Bosnian citizens. Some al Qaeda operatives in Bosnia reportedly had connections to members of Bosnia's intelligence service, due to al Qaeda's wartime cooperation with the Bosnian Muslims. Bin Laden and other al Qaeda figures mention the Bosnian war as a place where al Qaeda was active. Bosnian Muslims receive humanitarian assistance from Saudi organizations which have served as fronts for al Qaeda and have been used for planning attacks in Bosnia and elsewhere. In November 2004, the Bosnian Government charged 15 former Bosnian officials with illegally helping around 700 former foreign Islamic fighters in Bosnia gain Bosnian citizenship. In 2005, six former Bosnian Government officials were tried for their role in helping to establish an alleged terrorist training camp in Bosnia with Iran's help during the mid-1990s. Despite some recent counterterrorism successes, the Government's effectiveness has been generally hampered by insufficient coordination.

The Bosnian Government's human rights record has remained poor, due to physical abuse by police, overcrowding and poor prison conditions. Improper influence on the judiciary, harassment and intimidation of journalists, government corruption, and ethnically-motivated violence are problems in Bosnia.

Policies

In an evaluation of an applicant's security or trustworthiness suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (AG(s)). The AGs include brief introductory explanations for each AG, and provide specific disqualifying conditions and mitigating conditions.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process. AG ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. AG ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at AGs ¶ 2(a): “(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.”

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that “[a]ny doubt concerning personnel being considered for access to classified [or sensitive] information will be resolved in favor of national security.” AG ¶ 2(b). In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the Government has the initial burden of establishing controverted facts by “substantial evidence,”² demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).³

A person seeking access to classified or sensitive information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to such information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard

² “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

³“The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of such information.

The scope of an administrative judge's decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. Executive Order 10865, § 7.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Guideline C (Foreign Preference)⁴

AG ¶ 9 explains the Government's concern regarding Foreign Preference, "[w]hen an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States."

AG ¶ 10(a) indicates one condition that raises a security concern and may be disqualifying in this case, "(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current passport."

SOR ¶ 1.a. alleged Applicant as of February 2007 possessed a Socialist Federal Republic of Yugoslavia passport issued in July 1997 with an expiration date of July 2007. Although not alleged, Applicant held dual citizenship with Bosnia and Herzegovina. GE 1.

The Government produced substantial evidence of this disqualifying condition, and the burden shifted to Applicant to produce evidence and prove a mitigating condition. The burden of disproving a mitigating condition never shifts to the Government.

Three Foreign Preference Mitigating Conditions under AG ¶ 11 are potentially applicable to these disqualifying conditions:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

⁴ To the extent that AG ¶¶ 10(c) and 10(d) apply, they are clearly mitigated by AG ¶ 11(c).

(b) the individual has expressed a willingness to renounce dual citizenship; and

(e) the passport has been destroyed, surrendered to the cognizant security authority or otherwise invalidated.

AG ¶ 11(a) partially applies because Applicant derived his citizenship as a result of his birth, and heritage to Bosnia and Herzegovina, formerly Yugoslavia.

AG ¶ 11(e) fully applies. Regarding his Yugoslavian passport, it not only expired in July 2007, but was issued from a country that no longer exists. After becoming a U.S. citizen in 1999, Applicant has only used his U.S. passport for travel abroad.

Although not alleged, Applicant did have dual citizenship with Bosnia and Herzegovina at the time the SOR was issued. To demonstrate his commitment to the U.S., he has taken the extra step of exceeding the requirement of “express[ing] a willingness to renounce dual citizenship” as required in AG ¶ 11(b) by notifying the Embassy of Bosnia and Herzegovina by letter that he was formally renouncing his Bosnian and Herzegovinian citizenship.

Guideline B (Foreign Influence)

AG ¶ 6 explains the Government’s concern about “foreign contacts and interests” stating:

If the individual has divided loyalties or foreign financial interests, [he or she] may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 indicates three conditions that could raise a security concern and may be disqualifying in this case, including:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to

protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and

(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk or foreign inducement, manipulation, pressure, or coercion.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001). Applicant has frequent contacts with his parents and one brother, who are citizens and residents of Bosnia and Herzegovina and a second brother who is a citizen of Bosnia and Herzegovina and Serbia and Montenegro and resident of Serbia. These close relationships with his parents and brothers create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

The Government produced substantial evidence of these three disqualifying conditions primarily as it pertains to Applicant's contacts and relationship with his parents and brothers, his travel to Bosnia and Herzegovina and Serbia and Montenegro, and his non-U.S. citizen daughter who lives with him when she is not in medical school. The burden shifted to Applicant to produce evidence and prove a mitigating condition. As previously indicated, the burden of disproving a mitigating condition never shifts to the Government.

Two Foreign Influence Mitigating Conditions under Guideline ¶ 8 are potentially applicable to these disqualifying conditions:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

AG ¶ 8(a) partially applies. Applicant's parents and one brother are not associated with or connected with the Bosnian or Herzegovinian Government. His parents are elderly and in poor health. They along with Applicant's brother live on their

family farm. The other brother has a non-political job as an ombudsman for a municipality within Serbia and Montenegro. On the other hand, Applicant's parents and one brother do live in Bosnia and Herzegovina and his other brother lives in Serbia and Montenegro, and he has close emotional ties to them, as evidenced by his frequent telephone calls and visits to those countries. With regards to his parents and brothers, Applicant did not establish "it is unlikely [he] will be placed in a position of having to choose between the interests of [his parents] and the interests of the U.S." His frequent contacts with his parents and brothers could potentially force him to choose between the United States and Bosnia and Herzegovina and Serbia and Montenegro. On balance, he did not fully meet his burden of showing there is "little likelihood that [his relationship with his parents and brothers] could create a risk for foreign influence or exploitation."

AG ¶ 8(b) fully applies. Applicant and his family, to include his non-U.S. citizen daughter, have lived in the United States the last 18 years. He is completely vested in the U.S. His wife is a naturalized U.S. citizen as well as his son. His daughter is a permanent resident alien with a pending application to become a U.S. citizen. His father-in-law is a naturalized U.S. citizen and lives in the U.S. Appellant has developed a sufficient relationship and loyalty to the U.S., as he can be expected to resolve any conflict of interest in favor of the U.S. interest. He became a U.S. citizen in September 1999. His wife became a U.S. citizen in June 2001. Applicant has been employed by his defense contractor employer since December 1989, shortly after arriving in the U.S. and is very highly regarded at work. Applicant's contacts and linkage to the U.S. are much greater than his linkage to Bosnia and Herzegovina or Serbia and Montenegro. He is heavily vested in the U.S., financially and emotionally.

"Whole Person" Analysis

In addition to the enumerated disqualifying and mitigating conditions as discussed previously, I have considered the general adjudicative guidelines related to the whole person concept under Directive ¶ E2.2.1. "Under the whole person concept, the Administrative Judge must not consider and weigh incidents in an applicant's life separately, in a piecemeal manner. Rather, the Judge must evaluate an applicant's security eligibility by considering the totality of an applicant's conduct and circumstances."⁵ The directive lists nine adjudicative process factors (APF) which are used for "whole person" analysis. Because foreign influence does not involve misconduct, voluntariness of participation, rehabilitation and behavior changes, etc., the eighth APF, "the potential for pressure, coercion, exploitation, or duress," Directive ¶ E2.2.1.8, is the most relevant of the nine APFs to this adjudication.⁶ In addition to the

⁵ ISCR Case No. 03-04147 at 3 (App. Bd. Nov. 4, 2005) (quoting ISCR Case No. 02-01093 at 4 (App. Bd. Dec. 11, 2003)); ISCR Case No. 05-02833 at 2 (App. Bd. Mar. 19, 2007) (citing *Raffone v. Adams*, 468 F.2d 860 (2nd Cir. 1972) (taken together, separate events may have a significance that is missing when each event is viewed in isolation)).

⁶ See ISCR Case No. 02-24566 at 3 (App. Bd. July 17, 2006) (stating that an analysis under the eighth APF apparently without discussion of the other APFs was sustainable); ISCR Case No. 03-10954 at 5 (App. Bd. Mar. 8, 2006) (sole APF mentioned is eighth APF); ISCR Case No. 03-17620 at 4 (App.

eighth APF, other “[a]vailable, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.” Directive ¶ E2.2.1. Ultimately, the clearance decision is “an overall common sense determination.” Directive ¶ E2.2.3.

The Appeal Board requires the whole person analysis address “evidence of an applicant’s personal loyalties; the nature and extent of an applicant’s family’s ties to the U.S. relative to his [or her] ties to a foreign country; his or her ties social ties within the U.S.; and many others raised by the facts of a given case.” ISCR Case No. 04-00540 at 7 (App. Bd. Jan. 5, 2007).

I have carefully considered Applicant’s family connections and personal connections to Bosnia and Herzegovina and Serbia and Montenegro. He lived in Bosnia and Herzegovina for the first 33 years of his life. He was educated in Bosnia and Herzegovina, and served in the Bosnian and Herzegovinian military. His parents and one brother are citizens and residents of Bosnia and Herzegovina, and his other brother is also a citizen of Bosnia and Herzegovina and Serbia and Montenegro. He has frequent, non-casual contact with his parents and brothers. Applicant traveled to visit his family eight times since 2000. He held a Yugoslavian passport.

Substantial mitigating evidence weighs towards grant of Applicant’s security clearance. Applicant has lived in the United States for the past 18 years, and he has been a naturalized citizen over eight years. The only passport he has used since becoming a U.S. citizen is his U.S. passport. He has strong ties to the U.S. His wife, and two children as well as his wife’s father all reside in the U.S. His children have spent their formative years in the U.S. and are both pursuing higher education. Applicant stated his position succinctly, “I came here because I really wanted to be here.” He is a successful lab supervisor. His parents are elderly and in poor health. None of his immediate family members overseas are in positions placing them as likely targets as a means to exploit Applicant. He has no financial ties overseas in contrast to his U.S. financial ties. He took the affirmative step of formally renounce his Bosnian and Herzegovinian citizenship, which exceeds the requirement of “express[ing] a willingness to renounce dual citizenship.” There is no evidence he has ever taken any action which could cause potential harm to the United States. Particularly noteworthy is the fact he has successfully held a security clearance over one year.

Applicant’s employer’s confidence and trust in him is so high as to warrant recommending him for a clearance. This was clearly demonstrated by his company President testifying on his behalf. Other company officials wrote letters of support. The company President has held a clearance over a substantial period of time. Applicant takes his loyalty to the United States very seriously, and he has worked diligently for his employer for 18 years. His supervisors, family, and friends assess him as loyal, trustworthy, conscientious, responsible, mature, and of high integrity. He has an

Bd. Apr. 17, 2006) (remanding grant of clearance because Judge did not assess “the realistic potential for exploitation”), *but see* ISCR Case No. 04-00540 at 6 (App. Bd. Jan. 5, 2007) (rejecting contention that eighth APF is exclusive circumstance in whole person analysis in foreign influence cases).

excellent reputation as a friend, family member, employee and U.S. citizen. His witnesses and documentary evidence recommend him for a security clearance. The Government did not produce any derogatory information about him nor did anyone come forward recommending denial of his security clearance.

Although the Government has no obligation to present evidence that Applicant and/or his family members are foreign agents, Applicant's family members are not, and never have been, foreign agents. Bosnia and Herzegovina and Serbia and Montenegro are developed, stable, democratic republic with a modern economy. Bosnia and Herzegovina has favorable relations with the U.S., and the U.S. has participated in the Bosnian peacekeeping force and donated significant funds to help with reconstruction, humanitarian assistance, economic development, and military reconstruction.

This case must be adjudged on his own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. This Analysis must answer the question whether there is a legitimate concern under the facts presented that the Bosnian and Herzegovinian and Serbian and Montenegro Governments or its agents might exploit or attempt to exploit Applicant's immediate family members in such a way that this U.S. citizen would have to choose between his pledged loyalty to the U.S. and those family members.

After weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to foreign influence and preference.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"⁷ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude he is eligible for access to classified information.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline C:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a. – 2.e.:	For Applicant

⁷See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

Decision

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Robert J. Tuidor
Administrative Judge